Filed 11/18/16 In re P.S. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re P.S., a Person Coming Under the Juvenile Court Law.	B269672 (Los Angeles County Super. Ct. No. CK77145)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. VINCENT S., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Veronica McBeth, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Dismissed.

Nicole Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Patti L. Dikes, under appointment by the Court of Appeal, for Minor.

No appearance for Plaintiff and Respondent.

Vincent S. (father) appeals from the trial court's order denying his petition under Welfare and Institutions Code section 388,[1] arguing that the court abused its discretion when it did not place his infant daughter P.S. with paternal grandfather and his wife. Because father has no standing to appeal, we dismiss.

BACKGROUND

The Los Angeles Department of Children and Family Services (DCFS) filed a petition on April 1, 2015, alleging that P.S., then less than one month old, fell under section 300, subdivision (b). Mother had a history of substance abuse, currently used methamphetamine, and had mental and emotional problems including depression and bipolar disorder, for which she failed to take her psychotropic medications. Father had a history of illicit drug use and

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[1] All further statutory references are to the Welfare and Institutions Code.

currently used methamphetamine. He had a diagnosis of bipolar disorder and a criminal history including a conviction of voluntary manslaughter. These issues endangered the newborn's health and safety and put her at risk of harm.

On April 7, 2015, DCFS investigated paternal grandfather as a possible placement, and he indicated he would be willing to care for P.S. when he returned from an out-of-state trip. On April 21, 2015, DCFS reported that the residents of the paternal grandparents' home had been live-scanned and had no criminal records, but no inspection had taken place.

Father pleaded no contest to the petition at a hearing on April 21, 2015. The court found the petition true, ordered no reunification services for father, ordered reunification services for mother, and placed P.S. in foster care, ordering DCFS to assess the paternal grandfather for possible placement.

Father filed a request to change a court order under section 388 on October 20, 2015, requesting reunification services and unmonitored visits. In the alternative, he asked "for placement of [P.S.] with the paternal grandparents as [DCFS] has still not assessed their home against court orders." The juvenile court granted father a contested hearing on the section 388 petition and ordered DCFS to assess the home of paternal grandparents for placement. The trial court also terminated the parents' reunification services. The permanent plan was adoption by

the foster family, with a section 366.26 hearing scheduled for February 2016.

DCFS filed a last minute information on the day of the hearing, informing the court that on October 27, 2015, the social worker requested an assessment of the paternal grandfather's home. On December 1, the social worker learned the home had been assessed and the physical home inspection and criminal background had been cleared. DCFS was awaiting approval by a supervisor before placing the child with the grandparents. A September 2015 progress letter stated that father had severe and persistent mental illness rendering him unable to care for the child or for himself. Father's housing did not accept children.

Father attended the December 9, 2015 hearing on his section 388 petition. The foster father testified that through the social worker, he had made his contact information available to the paternal grandparents, but they had never contacted him or tried to visit P.S. Father's counsel argued the court should grant the petition and give father a chance at reunification. Counsel argued that the paternal grandparents "do want placement. They clearly have shown their interest because they made their home available" for the inspection. The foster parents were doing a great job, but it could be in P.S.'s best interest to be placed with relatives so at least if father obtained reunification services, he could visit P.S. at the home of the paternal grandparents.

P.S.'s counsel asked that the court deny father's section 388 petition. P.S. had no relationship at all with the

parental grandparents, who had never visited, and should remain in her foster care placement. Mother's counsel agreed. Counsel for DCFS recommended denial of the section 388 petition regarding reunification services, and agreed with P.S.'s counsel that P.S. should not be removed from her placement: DCFS "was assessing the home of the grandparents, but absent a court order did not intend to replace the child."

The trial court noted that P.S. was nine months old and had been in the same foster placement since detention. Father remained unable to care for P.S., and his living situation did not allow children. It was not in the best interest of P.S. to have family reunification services, or to be placed with paternal grandparents, who had never visited or called to arrange visitation. The court denied the section 388 petition and ordered that P.S. remain in the foster care placement.

Father filed a timely appeal. His opening brief argued only that the juvenile court abused its discretion by denying his section 388 petition's request for placement of P.S. with the paternal grandparents, without evaluating the relative placement factors in section 361.3. DCFS filed a letter informing this court that it would not file a respondent's brief, as DCFS had reported at the hearing that it had already evaluated the placement, and the paternal grandparents' home inspection and criminal background check had cleared. Counsel for P.S. filed a brief.

DISCUSSION

Father argues only one issue raised in his section 388 petition. He contends the juvenile court abused its discretion in denying his section 388 request for placement with the paternal grandparents without an independent evaluation pursuant to section 361.3, rather than a general consideration of the best interests of the child. He does not appeal the court's denial of his request for reunification services.

Orders denying section 388 petitions are appealable under section 395, but "[n]ot every party has standing to appeal every appealable order. . . . [O]nly a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*In re K.C.* (2011) 52 Cal.4th 231, 236 (*K.C.*).) To determine whether father was aggrieved and therefore has standing to appeal, we must "precisely identify" his interest. (*Ibid.*)

In *K.C.*, *supra*, 52 Cal.4th 231, the father of a dependent child appealed the denial of a section 388 petition filed by the child's grandparents, requesting that his placement be modified to place the child in their home. The father argued that he believed the child should be placed with the grandparents, but he did not offer any argument against terminating his parental rights. The trial court denied the section 388 petition, and without further

argument from the father, terminated his parental rights. Father then appealed from both the denial of the section 388 petition and the judgment terminating his parental rights, limiting his argument to the child's placement and arguing that if the court of appeal reversed the placement order, it should also reverse the judgment terminating parental rights. The appellate court dismissed the appeal because father was not aggrieved by the placement decision, as it could not be shown to affect his parental rights. (*Id.* at p. 235.)

Father's reunification services had been terminated, and "the decision to terminate or bypass reunification services ordinarily constitutes a sufficient basis for terminating parental rights." (*K.C.*, *supra*, 52 Cal.4th at pp. 236–237.) Father did not argue that any exception applied and "does not contend the order terminating his parental rights was improper in any respect. That he has no remaining, legally cognizable interest in K.C.'s affairs, including his placement, logically follows." (*Id.* at p. 237.) This was not a case in which "parents whose rights had been terminated were aggrieved by, and thus *did* have standing to appeal, pretermination orders concerning their children's placement, because the possibility existed that reversing those orders might lead the juvenile court not to terminate parental rights. These cases do not assist father because he makes no such argument." (*Ibid.*) "From these decisions we derive the following rule: A parent's appeal from a judgment terminating parental rights confers standing to appeal an

order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights. This rule does not support father's claim of standing to appeal because he did not contest the termination of his parental rights in the juvenile court. By thus acquiescing in the termination of his rights, he relinquished the only interest in K.C. that could render him aggrieved by the juvenile court's order declining to place the child with grandparents." (*Id.* at p. 238.) The court of appeal properly dismissed father's appeal for lack of standing because "father has not shown that he is aggrieved by the juvenile court's order denying grandparents' motion concerning placement." (*Id.* at p. 239.)

Here, father requested that P.S. be placed with the paternal grandparents, but the paternal grandparents never made a request for placement (although the grandfather at the time of detention stated he was willing to care for P.S., and eventually the grandparents allowed the assessment). Section 361.3, subdivision (a), states "preferential consideration shall be given *to a request by a relative of the child for placement of the child with the relative*." (Italics added.) "[A] timely request for placement, made in open court, is sufficient to trigger the investigation and evaluation required by section 361.3." (*In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1185.) The parental grandparents made no such request and never sought to see P.S. during the nine months P.S. lived with the foster parents.

Further, section 361.3 does not apply when (as here) reunification efforts have failed. (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1031–1023; see *In re Joseph T.* (2008) 163 Cal.App.4th 787, 797 [preference for relative placement applies throughout reunification period].) Here, father was never granted reunification services. Although he did argue for reunification services at the section 388 hearing, he does not appeal from the order denying his request. "[T]he decision to . . . bypass reunification services ordinarily constitutes a sufficient basis for terminating parental rights." (*K.C.*, *supra*, 52 Cal.4th at pp. 236–237.) Father does not argue (and did not argue at the section 388 hearing) that changing the placement order supported his argument for reunification services. Father also contends that mother's reunification services were not terminated until the day he filed his section 388 petition, but mother is not a party to this appeal. "Once a parent's reunification services have been terminated, the parent has no standing to appeal relative placement preference issues." (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 1460.)

Finally, the paternal grandparents do not appeal the denial of father's section 388 petition. This distinguishes Father's appeal from *In re Isabella G.* (2016) 246 Cal.App.4th 708, wherein father and paternal grandparents appealed the denial of the grandparents' section 388 petition requesting placement in their home, which they filed after parental rights had been terminated. The grandparents made repeated requests for placement from the outset,

visited the child frequently, and DCFS ignored their requests. (*Id.* at p. 711.) The court of appeal did not consider the contention that father lacked standing, because "[e]ven if father were not aggrieved by the juvenile court's ruling, he would have 'a status loosely akin to that of amicus curiae.' ([*K.C.*, *supra*,] 52 Cal.4th [at p.] 239.) Grandparents and father raise the same issues on appeal, and Grandparents formally join in father's briefing. We therefore consider the merits of the issues raised on appeal." (*Id.* at p. 718, fn. 8.)

As we stated above, the paternal grandparents never requested placement, did not file a section 388 petition, and are not parties to this appeal. Even if they had requested placement of P.S. in the juvenile court, the result would be the same before us. We quote our Supreme Court: "Here, in contrast, there is no appeal on the merits in which father might participate in a [amicus curiae] capacity. The only parties with standing to appeal—grandparents—did not file a timely notice of appeal." (*K.C.*, *supra*, 52 Cal.4th at p. 239.)

DISPOSITION

The appeal is dismissed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

LUI, J.